

ORIGINAL

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Case No. 2012 CF2 12082

v.

Hon. Judge Herbert Dixon
Sentencing Date: 11/27/2012

SEAN DELONTAY BRANCH /

MEMORANDUM OF THE UNITED STATES IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this Memorandum In Aid of Sentencing.

INTRODUCTION

The defendant in this case entered a pre-indictment plea of guilty to felony Cruelty to Animals and the government agreed to cap its allocation at the bottom of the applicable guideline range. The defendant's sentencing guideline range is 3 to 16 months, with the sentence being prison, short split, or probation permissible. The maximum penalty for the Felony Animal Cruelty charge is 5 years and/or a \$25,000.00 fine. For the reasons discussed in this memorandum, and in accordance with the government's plea agreement, the government submits that the defendant should be sentenced to a period of 3 months of incarceration followed by a period of 3 years of supervised release.

DISCUSSION

In fashioning a sentence, the Court may consider a wide range of information. See Roberts v. United States, 445 U.S. 552 (1980); United States v. Tucker, 404 U.S. 443 (1972); Williams v. New York, 337 U.S. 241 (1949); Powell v. United States, 588 A.2d 1166 (D.C.

1991). Notably, the Court may consider reliable information relating to acquitted conduct, Green v. United States, 571 A.2d 218 (D.C. 1990), and uncharged conduct, Powell, 588 A.2d at 1172. The Court must impose a sentence that (1) reflects the seriousness of the offense and the criminal history of the offender; (2) provides for just punishment and adequate deterrence to potential criminal conduct of the offender and others; and (3) provides the offender with needed educational or vocational training, medical care and other correctional treatment. 24 D.C. Code § 403.01(a). The sentence should serve the values of just punishment and offender rehabilitation and—most importantly—it must protect the community from future offenses.

The Offense Conduct

On the morning of June 29, 2012, a six-month-old puppy that belonged to [REDACTED], an acquaintance of the defendant, was tied to a fence behind the Circle Seven Express store in the 1200 block of Mount Olivet Road NE, Washington, DC. The puppy was sleeping when the defendant picked up a cement slab, weighing more than 90 pounds, walked over to the puppy and dropped the cement slab directly on the puppy's head. That morning, the defendant was angry with [REDACTED] because he thought [REDACTED] had robbed him the night before. The defendant waited for [REDACTED] — a man considerably larger than him — to leave the area so that he could harm the defenseless puppy [REDACTED] owned. Witnesses, however, saw the defendant drop the cement slab, and at least one witness ran and got [REDACTED] to notify him of what happened. [REDACTED] returned to see his puppy deceased, and the defendant was no longer in the area.

The Extent to Which the Defendant Accepted Responsibility

The government credits the defendant for taking responsibility by entering his guilty plea at an early stage of this case and has, in return, agreed to cap its allocution at the bottom of the guidelines. However, the government requests a straight-time incarceration sentence, in part,

because the defendant committed a very violent offense, for which to this day he has not fully accepted responsibility and has shown no remorse. Indeed, when interviewed by detectives he indicated that he simply threw the cement slab so that he could have a place to sit in the shade and did not intentionally kill the puppy. In his pre-sentence report, he concocts a whole different self-defense type story, stating that the dog licked him and scratched him with one of his teeth, and that he, in turn, slapped the dog in the head. Presentence Report at 4. In response to slapping the dog, he says the dog tried to bite him and that's when he picked up the brick and the hit the dog with it. Id. Further, as noted by the presentence report author, when asked if he had any remorse, the defendant indicated that he didn't care. Id. His lack of remorse for this heinous crime, coupled with his criminal history and supervision history, discussed next, leads the government to believe that the defendant is not a good candidate for probation.

Defendant's Criminal History and Supervision History

While this case marks the defendant's first felony conviction, his history is littered with misdemeanor offenses indicating the defendant does not respect the law and cannot abide by court orders. Specifically, of the defendant's 20 arrests and 10 convictions, charges include violations of protection orders, failures to appear, fugitive from justice, bail reform act violation, and contempt. Moreover, despite the multiple second chances the defendant has received by being placed on probation and afforded services, he has failed to successfully complete any period of supervision. As stated by CSO Struck, the defendant fails to comprehend the seriousness of his actions and does not take his health, addictions, or legal matters seriously. Presentence Report at 11. Accordingly, and for the reasons, discussed next, the defendant should not be afforded a period of probation, but should be incarcerated and placed on a 3-year period of supervised release.


THE RECOMMENDED SENTENCE

The government submits that the defendant should be sentenced to 3 months of incarceration, to be followed by 3 years of supervised release. The government's recommended sentence places the defendant at the bottom of the defendant's guideline range, as per its agreement, which gives credit to the defendant for pleading guilty in this case. Placing the defendant on 3 years of supervised release would also benefit the defendant and the community by punishing the defendant for the seriousness of his offense while providing him with much needed educational or vocational training, mental health care, anger management services, and other correctional treatment.

WHEREFORE, for all of these reasons, and any others that may appear to the Court,¹ the government respectfully urges the Court to sentence the defendant to 3 months of straight-time incarceration and requests that the defendant be placed on three years of supervised release for the felony Cruelty to Animals charge.

Respectfully submitted,

RONALD C. MACHEN, JR.
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¹ At the time of submission of this memorandum, the government has not received any victim impact statements. If the government receives any victim impact statements, it will forward those both to the court and counsel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by email upon the attorney for the defendant, David Frecker, Esq., on November 21, 2012.



ASSISTANT UNITED STATES ATTORNEY